

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

UNITED STATES OF AMERICA,

§

Plaintiff,

§ **CIVIL ACTION NO. 9:16-CR-00016-MAC**

v.

BENNY EARL HOLMES,

§

Defendant.

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**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On January 16, 2025, the court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Benny Earl Holmes. The government was represented Ryan Locker, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Jon Hyatt, Federal Public Defender.

Defendant originally pled guilty to the offense of Possession of a Firearm in Furtherance of Drug Trafficking Crime, a Class A felony. This offense carried a statutory maximum imprisonment term of life. The guideline imprisonment range, based on a total offense level of 0 and a criminal history category of IV, was 60 to 60 months. On February 13, 2017, U.S. District Judge Ron Clark sentenced Defendant to 60 months imprisonment, followed by 3 years of supervised release subject to the standard conditions of release, plus special conditions to include financial disclosure, and drug testing/treatment. On October 25, 2024, Defendant completed his period of imprisonment and began service of the supervision term.

Under the terms of supervised release, Defendant was required to refrain from any unlawful possession of a controlled substance. In its petition, the government alleges that Defendant violated

his conditions of supervised release on November 19, 2024, December 2, 2024, and December 16, 2024 when he submitted urine samples that tested positive for methamphetamine, and on December 18, 2024 when he submitted a urine sample that tested positive for marijuana. The government represents that Fifth Circuit case law permits a court to find that illicit drug use constitutes possession for the offense.

If the court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing methamphetamine and marijuana, Defendant will be in violation of Texas Health and Safety Code § 481.115 and have committed a Grade B violation. U.S.S.G. § 7B1.1(a). Upon finding of a Grade B violation, the court shall revoke supervised release. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade B violation is 12 to 18 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated that they had come to an agreement to resolve the petition whereby Defendant would plead true to the Grade B violation of the conditions of supervision referenced above by the unlawful possession of a controlled substance as alleged in the government's petition. In exchange, the government recommended to the court a sentence of 18 months with one year of supervised release to follow.

The court therefore **RECOMMENDS** that Defendant's plea of true be accepted and that he be sentenced to 18 months with one year of supervised release to follow. The court further **RECOMMENDS** that Defendant serve his sentence at FCI Seagoville, Texas, if available. The parties waived their right to objections so this matter shall be immediately presented to the District Judge for consideration.

So ORDERED and SIGNED this 21st day of January, 2025.